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OFFICE OF PETITIONS

In re Application of	:	
Toshikazu YANAI et al	:	
Application No. 08/994,642	:	DECISION ON PETITION
Filed: December 19, 1997	:	
Attorney Docket No. 03500.012444	:	

This is a decision on the petition, filed November 1, 2004, which is being treated as a petition under 37 CFR 1.8(b), requesting withdrawal of the holding of abandonment in the above-identified application.

The petition is **GRANTED**.

This application was held abandoned for failure to timely respond to the Office action of November 5, 2003, which set a three (3) month shortened statutory period for reply. Accordingly, a reply was due on or before February 5, 2004.

Petitioner states that a timely reply was mailed on March 26, 2004, which included the following: Request for RCE, and checks in the amounts of \$770.00 (RCE fee) and \$420.00 (two (2) months Extension of Time Fee). Petitioner has submitted a copy of the returned postcard bearing a date of March 26, 2004, which would have rendered the reply timely if received.

The file record does not include the originally submitted papers. Failure to receive correspondence which includes a certificate of mailing or certificate of facsimile transmission is addressed in 37 CFR 1.8(b), reproduced below:

In the event that correspondence is considered timely filed by being mailed or transmitted in accordance with paragraph (a) of this section, but not received in the U.S. Patent and Trademark Office after a reasonable amount of time has elapsed from the time of mailing or transmitting of the correspondence, or

after the application is held to be abandoned, or after the proceeding is dismissed, terminated, or decided with prejudice, the correspondence will be considered timely if the party who forwarded such correspondence:

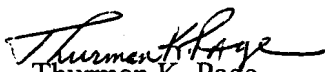
- (1) Informs the Office of the previous mailing or transmission of the correspondence promptly after becoming aware that the Office has no evidence of receipt of the correspondence;
- (2) Supplies an additional copy of the previously mailed or transmitted correspondence and certificate; and
- (3) Includes a statement which attests on a personal knowledge basis or to the satisfaction of the Director to the previous timely mailing or transmission. If the correspondence was sent by facsimile transmission, a copy of the sending unit's report confirming transmission may be used to support this statement.

The petition satisfies the above requirements of 37 CFR 1.8(b). Accordingly, the holding of abandonment for failure to timely file a reply to the Office action of November 5, 2003 is hereby withdrawn and the application restored to pending status.

The copy of the reply received with the petition will be accepted in place of the reply shown to have been mailed (or transmitted by facsimile) on March 26, 2004. The Office regrets the error and delay in withdrawing the abandonment.

The file does not indicate a change of address has been submitted, although the address given on the petition differs from the address of record. If appropriate, a change of address should be filed in accordance with MPEP 601.03. A courtesy copy of this decision is being mailed to the address given on the petition; however, the Office will mail all future correspondence solely to the address of record

This application is being referred to the Technology Center 2600 for processing of the RCE.


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